Filed 3/25/19 In re S.R. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re S.R., a Person Coming Under the Juvenile Court Law.	H045847 (Santa Clara County Super. Ct. No. 16JV42041)
THE PEOPLE, Plaintiff and Respondent, v. S.R., Defendant and Appellant.	

Appellant S.R. seeks review of a restitution order imposed under Welfare and Institutions Code section 730.6[1] after he admitted criminal offenses that subjected him to a wardship disposition under section 602. On appeal, he contends that the evidence did not support the restitution amount awarded to the victim and her family. We disagree and must therefore affirm the order.

Background

At about 6:15 p.m. on October 14, 2016, Sunnyvale police officers responded to a "possible domestic violence" report of a female screaming for help and a man carrying her. As the officers approached the front door of S.R.'s home, they heard muffled

[1] All further statutory references are to the Welfare and Institutions Code except as otherwise indicated.

screams from inside the house. They kicked the front door a few times, and S.R. opened the door. Inside was L.C., who was "crying hysterically," and she ran toward the officers.

On October 14, 2016 L.C. had been dating S.R. for about a year and a half. She was taking a nap at his house when she awoke from a bad dream and was feeling disoriented and groggy. She called to S.R., but when he came in, he jumped on top of her in a "playful" manner and attempted to kiss her. She turned her head to avoid the kiss and pushed him away. He became angry, and an argument ensued. Telling her she needed to calm down, S.R. grabbed L.C.'s wrists and pinned her down on the bed. L.C. bit his left shoulder to get him off her, but S.R. then bit her right shoulder, leaving a red mark. L.C. began screaming for help, so S.R. put both his hands around her neck to stop her from yelling, leaving a red mark on her throat. L.C. did not lose consciousness, but she could not speak. When he released her, he told her to get out of the house and she left. She tried to call 911 on her cell phone, but S.R. came up behind her and grabbed her phone to interrupt the call. He then picked her up, carried her back to the house, and would not let her leave.

S.R. was then 17 years old. He was charged by wardship petition under section 602 with five counts: assault by force likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(4), count 1); inflicting corporal injury on a specified person (Pen. Code, § 273.5, subd. (a), count 2); false imprisonment (Pen. Code, § 236-237, count 3); unlawful and malicious removal of a wireless communication device (Pen. Code, § 591.5, a misdemeanor, count 4); and kidnapping (Pen. Code, § 207, subd. (a), count 5). At the jurisdiction hearing on January 18, 2017, S.R. admitted counts 2 and 4, and the remaining charges were dismissed.

At the disposition hearing in February 2017 S.R. was declared a ward of the court. The court adopted the recommendations of the probation officer and placed the minor on

home probation, conditioned on domestic violence counseling, substance abuse counseling, and other requirements.[2]

On March 26, 2018, the court held a contested restitution hearing pursuant to section 730.6. S.R. was found to have the financial ability to pay restitution and was ordered to pay L.C. $106,078, jointly and severally with his mother. This timely appeal followed.

Discussion

The central issue raised by S.R. on appeal is whether there was sufficient evidence to support the amount of restitution ordered. L.C.'s father had requested $122,374, most of which was attributable to the cost of a 13-month stay at The Academy at Sisters, a therapeutic boarding school in Oregon.

As S.R. points out, L.C. had already been in weekly therapy for "family-related issues and relationship issues." Since October 14, 2016, L.C. explained at the restitution hearing, the assault was all she talked about in therapy, "but it wasn't sufficient at all," because her mental health was "extremely poor"; she was suicidal and struggled to take care of herself, do her schoolwork, and "function as a normal . . . human being." Even getting out of bed was difficult.

On November 7, 2016, L.C. was involuntarily transported to the Academy, where she remained until sometime in December of 2017. Her parents claimed expenses for the "therapeutic boarding school and mental health services," for various kinds of therapy and psychiatric assessments, and for travel for family visits. At the restitution hearing L.C.'s father named two therapists who had independently recommended a residential facility. When asked whether the parents had ever investigated local residential or

[2] On June 28, 2017, S.R. admitted violating probation by failing to complete the counseling programs. By September, however, S.R. had completed eight domestic violence counseling sessions, and his behavior at home, school, and the community had been satisfactory.

nonresidential programs for therapy, L.C.'s father explained that L.C. had been in the Aspire program, which was "designed to help teenagers cope with issues such as what she was dealing with." After the October 2016 incident the parents believed that it was necessary to be in a residential treatment facility; they tried to find one that was local but were unsuccessful.

S.R.'s counsel argued that the requested amount, $122, 374, was unreasonable: sending L.C. out of state was not completely related to this "one particular incident on one particular day"; it covered expenses for an entire year and a half; and L.C. had suffered "some severe mental health issues" before the incident. Defense counsel asked the court to reduce the claimed amount by the expenses for family visits and for the residential part of the program. Instead, he suggested, $20,000 would be more appropriate, as it would pay for a local program. The district attorney, however, pointed out that L.C.'s behavior had escalated after the incident to the point at which she became suicidal. Having consulted with two therapists and having found no residential facility in the state, the parents chose the best option for their child's recovery.

The court found most of the request justified, explaining, "I think that the minor exacerbated the preexisting injury and took it to a whole new level. I'll remind everybody that you take the victim as they are. And I don't believe the victim has a duty to ameliorate damages. What their duty is is to try to make themselves whole as a result of some criminal intervention. They don't have to go on the cheap. They don't have to look for the most expensive program." Here, the court found, "it's clear that the parents chose what they considered to be the best alternative." The court denied the $16,296 claimed for visits with the parents, however, leaving $106,078 to be paid in restitution.

Victim restitution for economic loss suffered as a result of criminal activity is constitutionally as well as statutorily mandated in California. (Cal. Const., art. 1, § 28.) Section 730.6 provides for victim restitution when a minor described in section 602 causes the victim to incur economic loss as a result of the minor's conduct. (§ 730.6,

subds. (a)(1), (a)(2)(B).) In addition to making the victim whole, victim restitution also has a deterrent and rehabilitative effect. (*Luis M. v. Superior Court* (2014) 59 Cal.4th 300, 305; cf. *People v. Cookson* (1991) 54 Cal.3d 1091, 1097.) The juvenile court must order full restitution— that is, an amount "sufficient to fully reimburse the victim . . . for all determined economic losses [sustained] as a result of the minor's conduct"—unless it finds "compelling and extraordinary reasons" not to do so and states them on the record. (§ 730.6, subd. (h)(1).) "The term 'economic loss' in the juvenile restitution statute must be given an expansive interpretation because any interpretation that limits a victim's rights to restitution would derogate the expressed intent and purposes of Article 1, section 28 [of the California Constitution], and the provisions of the implementing statutes." (*In re M.W.* (2008) 169 Cal.App.4th 1, 5.)

The juvenile court is vested with considerable discretion in determining the amount of restitution. The court abuses its discretion when it acts contrary to law or when there is no factual and rational basis for the amount of restitution ordered. (*In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1016.) Accordingly, on appeal we review a juvenile court's restitution award for abuse of that discretion. (*In re K.F.* (2009) 173 Cal.App.4th 655, 661.) To the extent the minor contends that the juvenile court abused its discretion because the award is unsupported by the evidence, we review the order for substantial evidence. (*Ibid.*)

It is undisputed that the cost of mental health services for the victim is among the expenses that may be included in a restitution award. (§ 730.6, subd. (h)(1); see *In re M.W.*, *supra*, 169 Cal.App.4th at p. 6 [though not specifically enumerated in the statute, professional mental health services to victims are recoverable costs].) Here, however, S.R. contends that the court failed to take into account the option of local treatment for L.C., which would have served as a "reasonable mitigation" of expenses. In his view, if—as L.C. testified—she felt unsafe staying in Sunnyvale where he lived, there was no evidence that he had violated the restraining order prohibiting contact with her. S.R. also

questions the necessity of a 13-month stay in the program, and he challenges the cost of transporting L.C. to Oregon, which took place through an independent professional service. Finally, S.R. argues, even if the Academy program was justified, then there was no evidence explaining why the extra $1,600 for monthly psychiatric visits was necessary in addition to the mental health services provided by the Academy.

In light of the statutory and constitutional mandate to accord victims full restitution "unless [the court] finds compelling and extraordinary reasons for not doing so," our Supreme Court has reminded us that section 730.6 must be broadly and liberally construed. (*Luis M. v. Superior Court*, *supra*, 59 Cal.4th at p. 305.) "Judges have broad discretion in fixing the amount of restitution, and 'the court may use any rational method of fixing the amount of restitution, provided it is reasonably calculated to make the victim whole, and provided it is consistent with the purpose of rehabilitation.' [Citation.]" (*In re Dina V.* (2007) 151 Cal.App.4th 486, 489; *In re Alexander A.* (2011) 192 Cal.App.4th 847, 853.) Further, it is within the scope of the court's discretion to "accept the victim's testimony as prima facie evidence of the amount owed and place the onus on the minor to rebut that evidence." (*In re S.O.* (2018) 24 Cal.App.5th 1094, 1102.)

S.R. did not meet that burden in rebuttal. The record does not indicate any failure to take into account the option of local treatment. The court was entitled to rely on the testimony of both L.C. and her father in determining that the Academy was an appropriate placement for her in light of L.C.'s inability to cope with the trauma she had suffered as a result of S.R.'s conduct. L.C. testified that she was suicidal after the assault and struggled even to get out of bed, much less keep up with her schoolwork. Although she had initially not wanted to be transported to the Academy in Oregon, she felt safe there and benefited from what she called "trauma therapy" and the other forms of therapeutic services provided, including medication for depression and anxiety. The court had sufficient evidence through the testimony of L.C.'s father that this residential program was necessary for L.C.'s recovery; according to his testimony, he was unable to

find a similar program for high school students in California.[3] The expenses of the monthly psychiatric sessions were also properly accepted by the court, given the father's testimony that there was no psychiatrist on staff at the school. It was for the lower court to determine the credibility of the witnesses and weigh the evidence. In so doing, the court properly determined that L.C.'s parents were justified in choosing "what they considered to be the best alternative," even as it rejected the claims attributable to family visits to Oregon. As the court's decision was not arbitrary or irrational or unsupported by substantial evidence, no abuse of discretion is apparent on this record.

Disposition

The order is affirmed.

[3] Defense counsel did not directly contest the cost of the independent service that transported LC to the Academy.

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ELIA, ACTING P. J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MIHARA, J.

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